

therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

Subscribed and sworn to before me, a _____ in and for the State and County above named, this _____ day of _____, 20____.

My Commission expires _____.

NOTE: The United States Criminal Code makes it a criminal offense to knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device, a material fact from, or make any false, fictitious or fraudulent statements or representations or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement to, any department or government agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001).

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008; 74 FR 17097, Apr. 14, 2009]

APPENDIX II TO PART 390—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT

[Contract No. MA/CCF—]

CAPITAL CONSTRUCTION FUND AGREEMENT WITH

This Capital Construction Fund Agreement (“Agreement”), made on the date hereinafter set forth, by and between the United States of America, represented by the Maritime Administrator, Department of Transportation (“Maritime Administrator”), and _____, a corporation organized and existing under the laws of the State of _____ (“Party”), a citizen of the United States of America.

Whereas: 1. The Party has applied for the establishment of a Capital Construction Fund (“Fund”) under section 607 of the Merchant Marine Act, 1936, as amended (“Act”);

2. The Party is the owner or lessee or has contracted for the construction of one or more eligible vessels as defined in 46 U.S.C. 53501, which vessels are listed in Schedule A hereof;

3. The Party has a program for the construction or acquisition of qualified agreement vessels as defined in 46 U.S.C. 53501, which program is described in Schedule B hereof;

4. The Maritime Administrator and the Party desire to enter into an Agreement for the purpose of providing replacement vessels, additional vessels, or reconstruction vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign,

Great Lakes, or noncontiguous domestic trade;

5. The Maritime Administrator has determined that the Party qualifies for an Agreement under the Act; and

6. The Maritime Administrator has authorized the award of an Agreement upon the terms and conditions set forth herein subject to the Act, as it may be amended from time to time, and such rules and regulations as shall be prescribed by the Secretary of Transportation or his delegate, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act (“rules and regulations”).

Now, therefore in consideration of the premises the Maritime Administrator and the Party hereby agree as follows:

1. *Establishment of a Fund:* (A) A Fund is hereby established for the purposes set forth in Article 2 hereof, pursuant to such terms and conditions as shall be prescribed in this Agreement, the Act, or the rules and regulations.

(B) The Fund shall be established in the depositories listed in Schedule C hereof.

2. *Purpose of the Fund:* The Fund established hereunder shall be utilized to provide for replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade, and to provide for qualified withdrawals to achieve the program set forth in Schedule B hereof.

3. *Term of the Agreement:* This Agreement shall be effective on the date of execution by the Maritime Administrator and shall continue until terminated under Article 4.

4. *Termination of Agreement:* (A) This Agreement may be terminated at any time under any of the following circumstances:

(1) Upon written mutual agreement by the parties;

(2) Upon written notice by the Party that a change has been made in the rules and regulations which would have a substantial effect upon the rights or obligations of the Party.

(B) This Agreement shall terminate upon completion of the program as set forth in Schedule B hereof.

(C) Upon termination of this Agreement pursuant to paragraphs (A) and/or (B) hereof all amounts remaining in the Fund shall be treated as if withdrawn in a nonqualified withdrawal (as that term is defined in the Act and the rules and regulations) on the date of termination of this Agreement.

5. *Deposits to be made into the Fund:* (A) Subject to any restrictions contained in the Act, the rules and regulations, or this Agreement, the Party may deposit, for each taxable year to which this Agreement applies, amounts representing:

(1) Taxable income attributable to the operation of the vessels listed in Schedule A or B hereof;

(2) The depreciation allowable under section 167 of the Internal Revenue Code of 1986, on the vessels listed in Schedule A or B hereof;

(3) The net proceeds from the sale or other disposition of any of the vessels listed in Schedule A or B hereof; and

(4) The net proceeds from insurance or indemnity attributable to the vessels listed in Schedule A or B hereof.

(B) The Party shall deposit for each taxable year to which this Agreement applies:

(1) All receipts from the investment or re-investment of amounts held in the Fund, except that the Party shall not be permitted to deposit more than is necessary to complete its program set out in Schedule B hereof; and

(2) The net proceeds from the mortgage of any vessel listed in Schedule B hereof for which qualified withdrawals from the Fund have been made.

(C) Notwithstanding anything in paragraph (A) or (B) hereof to the contrary, the Party shall make the minimum deposits set forth in Schedule D hereof at the time and in such amounts as may be set forth therein. The Party specifically agrees to deposit up to one hundred percent of allowable taxable income attributable to the operation of agreement vessels in order to meet its obligations under this paragraph.

(D) In the event that any leased vessel listed in Schedule A hereof is included in another capital construction fund agreement, the maximum amount of depreciation which the Party may deposit in respect to that vessel shall be calculated by using the allowable percentage of the depreciation ceiling listed for that vessel in Schedule A hereof.

6. *Withdrawals from the Fund:* (A) The Party may make such qualified withdrawals (as that term is defined in the Act and the rules and regulations) as shall be necessary to fulfill the obligations set forth in Schedule B hereof. Any such qualified withdrawal may be made without the consent of the Maritime Administrator, except as required by the rules and regulations.

(B) Any other withdrawal from the Fund shall be made only upon the prior written consent of the Maritime Administrator, as required by the rules and regulations.

7. *Investment of the Fund:* (A) The Party, at its discretion, may invest assets held in the Fund in accordance with the Act and the rules and regulations.

(B) The Party agrees that when investing assets held in the Fund to make such investments as will insure that sufficient cash is available at the time qualified withdrawals are required in accordance with the program described in Schedule B hereof.

8. *Pledges, Assignments and Transfers:* (A) The Party agrees not to assign, pledge or

otherwise encumber, either directly or indirectly or through any reorganization, merger, or consolidation, all or any part of this Agreement, the Fund, or any assets in the Fund without the prior written consent of the Maritime Administrator; *Provided, however,* The Party may transfer the assets of the Fund, in whole or in part, to an investment trustee, as provided in the rules and regulations.

(B) The Party shall not obligate any assets in the Fund as a compensating balance.

(C) The Party may not sell, transfer or otherwise dispose of any vessel, or part thereof, described in Schedule B hereof without the prior written consent of the Maritime Administrator.

9. *Records and Reports:* (A) The Party and each affiliate, domestic agent, subsidiary or holding company connected with, or directly or indirectly controlling or controlled by the Party shall keep its books, records, and accounts relating to the maintenance, operation, servicing of the vessel(s) and/or service(s) covered by this Agreement in such form as may be prescribed by the Maritime Administrator under the rules and regulations.

(B) The Maritime Administrator agrees not to require the duplication of books, records and accounts required to be kept in some other form by the Interstate Commerce Commission or the Secretary of the Treasury, so long as the information required in paragraph (A) hereof is made available to the Maritime Administrator.

(C) The Party agrees to file, upon notice from the Maritime Administrator, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, charters, ships' logs, memoranda of facts and transactions, as in the opinion of the Maritime Administrator may affect the Party's performance under this Agreement.

(D) The Maritime Administrator may require by regulation that any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Maritime Administrator.

(E) The Maritime Administrator may require the Party to establish and maintain systems of control of expenses and revenues in connection with the operation of the agreement vessel(s).

(F) The Party agrees to submit promptly to the Maritime Administrator any contract executed in connection with the program described in Schedule B hereof.

(G) The Maritime Administrator is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in this Article whenever he may deem it necessary or desirable.

10. *Modification and Amendment:* This Agreement may be modified or amended at any time by mutual written consent.

11. *Incorporation of Schedules:* The attached Schedules A, B, C, and D are incorporated into and made a part of this Agreement.

12. *Liquidated Damages:* (A) In the event that the Party operates any qualified agreement vessel described in Schedule B hereof in geographic trades other than those permitted by 46 U.S.C. 53501 *et seq.*, this Agreement, and/or the rules and regulations, the Party shall pay to the United States an amount of liquidated damages for each day of such impermissible geographic trading which shall constitute the time value of the deferral of Federal income tax which the Party has received. The amount shall be calculated in accordance with the rules and regulations.

(B) The Party agrees to pay the daily rate of liquidated damages to the Maritime Administrator, for deposit in the Treasury of the United States, within the time limits provided for in the rules and regulations.

(C) Nothing in this Article shall in any way be construed to diminish or waive any of the Maritime Administrator's other remedies for breach under the Act, the Agreement, or the rules and regulations.

(D) Notwithstanding the fact that the Agreement may be terminated pursuant to the provisions of Article 4 hereof, or otherwise, the provisions of this Article 12 shall continue in effect as follows:

(1) In the case of a vessel constructed or acquired within one year of final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of twenty (20) years from the date of such vessel's final delivery;

(2) In the case of a vessel reconstructed or acquired more than one year after final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of ten (10) years from the date of such vessel's final delivery from the shipyard after reconstruction or the date of such vessel's acquisition; and

(3) In the case of a vessel included in Schedule B hereof as a qualified agreement vessel in regard to which qualified withdrawals from the Fund have been made to pay existing indebtedness, for a period of ten (10) years from the date of the first qualified withdrawal in regard to such vessel, *Provided, however,* That if such vessel was more than fifteen (15) years old on the date of the first qualified withdrawal in regard thereto, such conditions shall continue for a period of five (5) years in regard to such vessel.

13. *Warranties and Representations by the Party:* The Party hereby warrants and represents that:

(A) The Party is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, and will con-

tinue to be so for the term of this Agreement. The Party agrees that, each year, within thirty (30) days after the annual meeting of its stockholders, it shall file a supplemental affidavit as evidence of its continuing United States citizenship, provided that any changes in data last furnished with respect to officers, directors, and stockholders holding five percent or more of the issued and outstanding stock of each class or series which would result in a loss of the Party's status as a United States citizen shall be promptly reported to the Maritime Administrator.

(B) The Party owns, is the lessee, or has contracted for the construction of one or more eligible vessels (within the meaning of 46 U.S.C. 53501) as listed in Schedule A hereof.

(C) The qualified vessels described in Schedule B hereof: (1) Were or will be constructed or reconstructed in the United States, except as provided in the Act and the rules and regulations;

(2) Are or will be documented under the laws of the United States and will continue to remain so documented; and

(3) Will be operated in the foreign, Great Lakes or noncontiguous domestic trade of the United States within the meaning of the Act and the rules and regulations

(D) The Party will meet its deposit obligations as agreed upon in Article 5 of this Agreement.

(E) The Party will promptly inform the Maritime Administrator, in writing, of any change in circumstances which would tend to adversely affect the ability of the Party to carry out its obligations under the Agreement.

(F) The Party will faithfully conform to all rules and regulations governing the Agreement and the Fund.

(G) Nothing of monetary value has been improperly given, promised, or implied for entering into this Agreement. The Party further warrants that no improper personal, political or other activities have been used or attempted in an effort to influence the outcome of the discussions or negotiations leading to the award of this Agreement. Breach of this warranty shall constitute an event of default for which the Maritime Administrator shall have the right, notwithstanding Article 4, to terminate this Agreement without liability to the United States.

14. *Default in Obligations:* (A) If the Maritime Administrator determines that any substantial obligation under this Agreement is not being fulfilled by the Party, he may, under the rules and regulations and after the Party has been given notice and an opportunity to be heard, declare a breach and treat the entire Fund, or any portion thereof, as an amount withdrawn in a non-qualified withdrawal.

Maritime Administration, DOT

Pt. 390, App. II

(B) The Maritime Administrator shall provide an opportunity for the Party to cure a breach declared pursuant to Paragraph (A) of this Article 14.

(C) Events of breach by the Party shall include, but shall not be limited to: (1) Failure in any respect to use due diligence in performing the program set forth in Schedule B hereof;

(2) Obligating the assets in the Fund as a compensating balance;

(3) Failure to make deposits required in Schedule D hereof;

(4) Failure to secure written permission from the Maritime Administrator when such permission is required by the rules and regulations;

(5) Failure to submit reports and/or records on a timely basis as provided in Article 9 hereof;

(6) Any material misrepresentation made by the Party or any failure by the Party to disclose material information in connection with this Agreement whether before or after execution hereof and whether made in an application, report, affidavit, or otherwise; or

(7) Failure by the Party to comply with any provisions of 46 U.S.C. 53501 *et seq.* the rules and regulations, or this Agreement.

15. *Extension of Federal Income Tax Benefits:*
The Maritime Administrator agrees that the Federal income tax benefits provided in the Act and the rules and regulations shall be available to the Party if the Party shall carry out its obligations under this Agreement.

UNITED STATES OF AMERICA, MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION

(SEAL)
Attest:
By _____

(Secretary)

(SEAL)
By _____
(Secretary)
Attest:

By _____
(Contracting Officer)

(Secretary)

Approved as to form: (Date of Execution)

By _____
(Assistant General Counsel, Maritime Administration) (President)

XYZ Co—SCHEDULE A—ELIGIBLE AGREEMENT VESSELS

(a)	(b)	(c)	(d)	(e)
Name of vessel	Specific type	Capacity	Owned or leased and owner is leased	Date and place constructed
SS <i>Smith</i> , official No. 236425..	Tanker	56,000 dwt	Leased: ABC Ships, Inc., San Diego, Calif., 50 percent of depreciation ceiling.	1962, American Steel, San Francisco, Calif.
SS <i>Brown</i> , official No. 325111.	.....do	265,000 dwt	Owned	1974, Southern Shipyards, Mobile, Ala.
SS <i>Jones</i> , official No. 190528..	Container ship	30,000 dwt, 500 40-ft containers.	.....do	1954, Bond Shipyard, New York, N.Y.
<i>Hercules</i> , official No. 256,125.	Oceangoing tugboat ...	105 ft 2,000 hp .....	.....do	1968, Washington Iron Works, Seattle, Wash.
XYZ-1, official No. 257,164.	Roll-on, roll-off barge ...	1,200 gr ton, 45 40-ft containers.	.....do	1968, Washington Iron Works, Seattle, Wash.
XYZ-2, official No. 260,138.	.....do .....	.....do .....	.....do	1969, Washington Iron Works, Seattle, Wash.
OTC-35, official No. 262,170.	.....do	1,500 gr ton, 60 40-ft containers.	Leased; Oregon Towing Co., Portland, Ore., 100 percent of depreciation ceiling.	1969, J. & J. Shipyard, Portland, Ore.
200 trailers, Nos. 111032-A-10677B-1M through 11032-A-10877B-1M.	Dry cargo	40 ft	Leased; International Leasing Co., New York, N.Y. 0 percent of depreciation ceiling.	1968, Acme Container Corp., New York, N.Y.
1,500 containers, Nos. 312 A through 1312 A..	Refrigerated dry cargo.	.....do	Owned	1969, Aluminum Products, Inc., Dallas, Tex.

XYZ Co—SCHEDULE A—ELIGIBLE AGREEMENT VESSELS (CONTINUED)

	(f)	(g)	(h)	(i)
	Date and place reconstructed	Date documented	Area of operation	Details of service
SS <i>Smith</i> , official No. 236425.	Not available	1962	Noncontiguous domestic trade.	Carriage of crude oil from Valdez, Alaska, to west coast of the continental United States.
SS <i>Brown</i> , official No. 325111.	.....do	1974	U.S. foreign trade	Worldwide carriage of crude oil.
SS <i>Jones</i> , official No. 190528.	1970, Litton Systems, Mississippi.	1954	U.S. foreign and non-contiguous trade.	Container service between Japan and California via Hawaii.
<i>Hercules</i> , official No. 256,125.	Not available	1968	Domestic	Towing roll-on, roll-off barges from Puget Sound to San Francisco.
XYZ-1, official No. 257,164.	.....do	1968	.....do	Carriage of trailer type containers between Puget Sound and San Francisco.
XYZ-2, official No. 260,138.	.....do	1969	.....do	Do.
OTC-35, official No. 262,170.	.....do	1969	.....do	Do.
200 trailers, Nos. 111032-A-10677B-1M through 11032-A-10877B-1M.	.....do	NA	.....do	For use on Barges XYZ-1, XYZ-2, and OTC-35.
1,500 containers, Nos. 312 A through 1312 A..	.....do	NA	U.S. foreign non-contiguous domestic trade.	For use as complement of SS <i>Jones</i> .

XYZ Co., PROGRAM OBJECTIVES—I. ACQUISITION OR CONSTRUCTION OF VESSELS

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., PROGRAM OBJECTIVES—II. RECONSTRUCTION OF VESSELS

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., PROGRAM OBJECTIVES—III. PAYMENT OF PRINCIPAL ON EXISTING INDEBTEDNESS

Vessel name and official number	Purpose of indebtedness	Amount to be paid from fund

XYZ Co., SCHEDULE C—DEPOSITORY FOR CAPITAL CONSTRUCTION FUND

Name	Address
1. First American Bank checking account	2001 Park Ave., San Francisco, Calif. 94109.
2. Southern California National Bank investment trustee established pursuant to sec. 390.7 of the SOC regulations.	1 Waterfront Place, San Francisco, Calif. 94101.

XYZ Co. SCHEDULE D—MINIMUM DEPOSITS

[In thousands]

Taxable year	Ordinary income	Net proceeds	Fund interest	Depreciation	Total
1973 to 1975	\$3,150	¹ \$2,400	\$250	.....	\$5,800
1976 to 1978	2,900	² 1,500	325	.....	4,725
1979 to 1981	3,000	.....	350	85	3,435

XYZ CO. SCHEDULE D—MINIMUM DEPOSITS—Continued
[In thousands]

Taxable year	Ordinary income	Net proceeds	Fund interest	Depreciation	Total
1982 to 1984	2,800 .....	.....	74	125	3,000
1985 to 1987	2,850 .....	.....	90	60	3,000
1988 to 1990	2,900 .....	.....	100 .....	.....	3,000
1991 to 1993	3,000 .....	.....	100 .....	.....	3,100
1994 to 1996	3,100 .....	.....	110 .....	.....	3,210
1997 to 1999	3,250 .....	.....	120 .....	.....	3,370
2000	3,200 .....	.....	120 .....	.....	3,320
Total .....	.....	.....	.....	.....	35,960

¹ Net proceeds from sale of barges XYZ-1 and XYZ-2 for \$1,200,000 each.
² Net proceeds from sale of tug Hercules.

[41 FR 4265, Jan. 29, 1976, as amended at 42 FR 43632, Aug. 30, 1977; 74 FR 17097, Apr. 14, 2009]

EDITORIAL NOTE: At 73 FR 56741, Sept. 30, 2008, appendix II to part 390 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

APPENDIX III TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—SAMPLE SEMIANNUAL REPORT

[Illustrative sample of the report required by the Maritime Administration pursuant to 46 CFR part 390 prescribing the capital construction fund reporting requirements to be followed by those companies which are party to a capital construction fund agreement]

EXHIBIT A—XYZ CO., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19__

	Thousands
Cash (exhibit A-1 and B)	\$1,025
Securities and stock—adjusted basis (exhibit A-2 and B)	2,560
Fund total for tax purposes on deposit (exhibit C)	3,585
Net accrued deposits and withdrawals (exhibit A-3)	450

EXHIBIT A—XYZ CO., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19__—Continued

	Thousands
Fund total (agrees with balance sheet submitted at this date) on deposit for book purposes—June 30, 19__	4,035
Portion of fund total for tax purposes as of June 30, 19__, which represents a "CCF: Security amount" pursuant to an agreement covering the dual use of a capital construction fund	Thousands
Balance brought forward	\$403
Deposits	82
Total "CCF: Security Amount"	485

EXHIBIT A-1—XYZ COMPANY

SUMMARY OF CASH ON DEPOSIT IN CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19__	
	Thousands
First American Bank, San Francisco, Calif., checking account No. 654-0876-211	\$1,025
Total cash in capital construction fund at June 30, 19__	1,025

EXHIBIT A-2—XYZ CO., SUMMARY OF SECURITIES AND STOCK (ADJUSTED BASIS AND FAIR MARKET VALUE) IN CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19__ (IN THOUSANDS)

	Adjusted basis	Fair market value
Treasury notes—due July 4, 19__, \$800,000 face value, 1st American Bank, San Francisco, Calif., trust account No. 610-2135	\$760	\$760
Negotiable certificate of deposit—due July 31, 19__, \$500,000 at 8 percent, 1st American Bank, San Francisco, Calif., CD No. 186007	500	500
U.S.A. Motors, Inc.—class A common stock, 5,000 shares, Southern California National Bank, trust account No. 358-21	625	725
Energy Co., Inc.—1st preferred, 4,100 shares, Southern California National Bank, trust account No. 358-21	205	255